

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal)	
Service)	CC Docket No. 96-45
)	
PETITION OF AT&T WIRELESS)	FCC 97-419
SERVICES, INC. For Designation as an)	
Eligible Telecommunications Carrier Pursuant)	
to Section 214(e)(6) of the Communications)	
Act, FCC 97-419)	

**REPLY COMMENTS OF AT&T WIRELESS SERVICES, INC. IN SUPPORT OF ITS
PETITION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS
CARRIER IN THE STATE OF FLORIDA**

AT&T Wireless Services, Inc., for itself and on behalf of its subsidiary licensees, AT&T Wireless Services of Florida, Inc., Melbourne Cellular Telephone Company, Sarasota Cellular Telephone Company, AT&T Wireless PCS, LLC, Bradenton Cellular Partnership, and Ocala Cellular Telephone Company, Inc. (collectively, "AWS"), respectfully submits its Reply to the Comments of TDS Telecommunications Corp. ("TDS") and Verizon Communications, Inc. ("Verizon") in the above-captioned proceeding, which concerns AWS' Petition for designation as a competitive federal eligible telecommunications carrier ("ETC") in requested service areas in the State of Florida.¹

TDS' and Verizon's Comments consist almost entirely of generic policy arguments that are clearly not before the Commission in this proceeding. And the only arguments specific to AWS' Petition are vague, unsupported and incorrect assertions that ignore the Commission's

¹ As Verizon's Comments broadly address the Petitions of several competitive carriers, AWS will limit its Reply to those issues concerning its Petition.

directives in *Virginia Cellular*.² These arguments should, therefore, be rejected, and the Commission should proceed to designate AWS as a competitive ETC in Florida without delay.

I. THE COMMISSION SHOULD NOT DELAY THE CONSUMER BENEFITS OF COMPETITIVE ETC ENTRY IN FLORIDA

TDS' and Verizon's primary argument is that the Commission should "suspend consideration" of all competitive ETC Petitions pending consideration of the *Recommended Decision* of the Federal-State Joint Board on Universal Service ("Joint Board") in the separate rulemaking commenced June 8, 2004.³ (TDS Comments, p.7; Verizon Comments, p. 7). In other words, TDS and Verizon ask the Commission to ignore the following:

- 47 U.S.C. § 214(e)(6), which requires the Commission to act on designation requests filed by common carriers seeking to serve as competitive ETCs;
- The *Twelfth Report and Order* in CC Docket 96-45, in which the Commission committed to resolving ETC designation petitions within a six-month time frame, recognizing that "excessive delay in the designation of competing providers may hinder the development of competition and the availability of service in many high-cost areas;"⁴
- Universal service policies are continually evolving, and the Telecommunications Act of 1996 (the "Act") fully contemplates that the Commission and Joint-Board would

² *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, *Memorandum Opinion and Order*, FCC 03-338 (rel. Jan. 22, 2004) ("*Virginia Cellular*").

³ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Notice of Proposed Rulemaking*, FCC 04-127 (rel. June 8, 2004); *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Recommended Decision*, FCC 04J-1 (rel. Feb. 27, 2004) ("*Recommended Decision*").

⁴ *In the Matter of Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved Areas and Underserved Areas, Including Tribal and Insular Areas*, CC Docket 96-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, FCC 00-208, ¶ 9 (rel. June 8, 2000).

continue to review and address universal service support policies and mechanisms over time;⁵

- The *Twenty-Fifth Order on Reconsideration*, in which the Commission commended and encouraged state public utility commissions to continue resolving ETC applications during the Commission's continuing review of universal service policies;⁶
- The Commission's statement in *Virginia Cellular* that: "While we await a recommended decision from the Joint Board . . . The framework enunciated in this Order shall apply to all ETC designations for rural areas pending further action by the Commission;"⁷ and
- The Commission's Public Notice, in which it directed that pending petitions, including this one, would be evaluated consistent with the standards set forth in the *Virginia Cellular* and *Highland Cellular* decisions.⁸

While it is true that the Commission has considered and will continue to consider broad policy issues, it is neither appropriate nor lawful to reserve high-cost and low-income universal

⁵ See 47 U.S.C. § 254(c)(1)-(2) ("Universal service is an evolving level of telecommunications services that the Commission shall establish periodically under this section, taking into account advances in telecommunications and information technologies and services . . . The Joint Board may, from time to time, recommend to the Commission modifications in the definition of the services that are supported by Federal universal service support mechanisms.")

⁶ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, *Twenty-Fifth Report and Order*, FCC 03-115, ¶ 26 (rel. May 21, 2003) ("[W]e note that a number of ETC designation requests pending at the time of release of the *Twelfth Report and Order and Further Notice* have been resolved by state commissions. We commend these state commissions for resolving those designation requests. We continue to encourage state commissions to act with the appropriate analysis yet as expeditiously as possible on all such requests. In addition, we note that a state's action on ETC designation request may be reviewed under section 253 as a potential barrier to entry. . .")

⁷ *Virginia Cellular*, ¶ 4 (emphasis added).

⁸ See Public Notice, *Parties are Invited to Update the Record Pertaining to Pending Petitions for Eligible Telecommunications Carrier Designations*, CC Docket No. 96-45, DA 04-999 (rel. April 12, 2004).

service support to incumbent carriers while this occurs. This is particularly true in Florida where consumers in rural and high-cost areas currently have no choice of ETC providers and are, therefore, presently denied the benefits of competition that this Commission has repeatedly recognized.⁹ More importantly, delaying AWS' designation as a competitive ETC will deny Florida's high-cost and low-income consumers the specific and unique benefits of its service offerings, including larger local calling areas, reduced long distance rates, the benefits of mobility, state-of-the-art technology, advanced features (e.g., voice-mail, caller-ID, call-waiting and call-forwarding), and wireless Internet, email, paging service, text-messaging, digital photography and hand-held computing.¹⁰ Accordingly, AWS respectfully requests that the Commission take the action to which it has committed and proceed to grant AWS' Petition without delay.

II. THE COMMISSION SHOULD REJECT TDS' AND VERIZON'S UNSUPPORTED CLAIMS OF HARM

TDS and Verizon make several factual assertions regarding AWS' Petition that are either unsupported by the record, or are simply inaccurate. First, TDS and Verizon observe that

⁹ See <http://www.universalservice.org/overview/filings/2004/Q3/>: Universal Service Administrative Company, Appendix HCO1 - 3Q 2004 (no competitive ETCs eligible to receive support in the State of Florida); see also *In the Matter of the Federal-State Joint Board on Universal Service, Western Wireless Corp. Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, *Memorandum Opinion and Order*, DA 00-2896, ¶ 22 (rel. Dec. 26, 2000) (“[W]e find no merit to the contention that designation of an additional ETC in areas served by rural telephone companies will necessarily create incentives to reduce investment in infrastructure, raise rates, or reduce service quality to consumers in rural areas. To the contrary, we believe that competition may provide incentives to the incumbent to implement new operating efficiencies, lower prices, and offer better service to its customers.”)

¹⁰ Indeed, the undisputed consumer benefits of AWS' unique service offerings have been recognized by the public utility commissions of Puerto Rico, Washington and Mississippi, where the Company has already been designated as a competitive ETC. See *Telecorp Communications, Inc. h/n/c AT&T Wireless*, Case No. JRT-2003-SU-003, *Resolution and Order* (Sep. 10, 2003); *In the Matter of the Petition of AT&T Wireless PCS of Cleveland, LLC, et al.*, Docket No. UT-043011, *Order No. 1* (April 13, 2004); *In re: Application of AT&T Wireless Services, Inc. for Designation as an Eligible Telecommunications Carrier*, Docket 03-UA-0937 (June 30, 2004).

multiple carriers are seeking designation as competitive ETCs and suggest that “many rural markets may not have the economies of scale to sustain competition.” (TDS Comments, pp. 5 & 9; Verizon Comments, p. 7). Notably, however, TDS does not contend that its Florida study area is unable to support competition; nor does Verizon for obvious reasons. And neither company provides any data to support a finding that it will be unable to compete with AWS for the provision of universal service, or that AWS’ designation will compromise its ability to continue serving as an ETC.¹¹ In fact, the Commission may take notice that no incumbent ETC has ever sought to relinquish its ETC designation in response to competitive entry by an additional ETC.

The Commission has repeatedly recognized that a party opposing the designation of a competitive ETC bears the burden of supporting such claims with specific evidence and cannot merely rely on unsubstantiated assertions.¹² Thus, because TDS and Verizon fail to offer any evidence to support their claim that AWS’ requested ETC service areas cannot support competition, they must be rejected.

Second, TDS suggests that the Commission must defer consideration of AWS’ Petition for designation in its Florida study area until the Commission has evaluated the viability of

¹¹ Indeed, both TDS and Verizon would be hard pressed to suggest that they are unable to compete with AWS for universal service customers in Florida. For example, Telephone and Data Systems, Inc. (“TDS, Inc.”), TDS Telecommunications Corp.’s parent corporation, owns and operates substantial telecommunications assets throughout the United States. As of December 31, 2003, TDS, Inc. operated 111 incumbent local exchange carriers (“ILEC”) in twenty eight states, served 364,800 equivalent access lines in five states through its competitive local exchange carrier (“CLEC”) operation, and served 4,409,000 wireless customers through its U.S. Cellular subsidiary — itself a competitive ETC in the states of Washington, Iowa and Wisconsin. See <http://www.teltda.com/investor> (Form 10-K/A - 2003 Annual Financial Report).

¹² For example, the Commission noted in designating RCC Holdings as an ETC in Alabama: “The parties opposing this designation have not presented persuasive evidence to support their contention that designation of an additional ETC in the rural areas at issue will reduce investment in infrastructure, raise rates, reduce service quality to consumers in rural areas or result in loss of network efficiency.” *In the Matter of Federal State Joint Board on Universal Service*, CC Docket No. 96-45, *Memorandum Opinion and Order*, DA 02-3181, ¶ 26 (rel. Nov. 27, 2002) (“*RCC Holdings Order*”).

per-line support benchmarks . . .” (TDS Comments, p. 10). In support of this argument, TDS provided an earlier example of how these speculative benchmarks may be applied:

Under this type of proposal, no CETCs would be designated in rural areas receiving high-cost support above a specified amount per line (such as \$30 per line or more). In addition, the number of CETCs that could be designated in other rural areas would be limited depending on the amount of per-line support received (*e.g.*, one CETC might be permitted in areas receiving more than \$20 per line in high-cost support and two CETCs might be permitted in areas receiving more than \$10 per line).

(TDS Comments, p. 3, n. 7). Notably, under TDS’ own example there would be no barrier to designation of multiple competitive carriers in its Florida study area as the company’s per-line average support is below \$10 per month.¹³ Thus, even if the Commission were persuaded to delay competitive entry pending review of the Joint-Board’s benchmark proposal, the TDS study area at issue would likely be unaffected by the adoption of any such benchmarks.

Third, both TDS and Verizon complain that the overall impact of designating multiple competitive ETCs will ultimately be to dilute the amount of support available to the incumbents. (*See* TDS Comments, pp. 4-5; Verizon Comments, pp. 4-5). The Commission has repeatedly rejected these type of speculative funding arguments as being beyond the scope of an individual ETC designation proceeding and should do so again here. Indeed, in *Virginia Cellular*, the Commission observed that the impact of any one competitive ETC is, at best, inconclusive and that the appropriate forum to address any funding concerns is in the ongoing *Portability* proceeding.¹⁴

Moreover, as TDS and Verizon are well aware, the amount of universal service support provided to the incumbent ETCs, who often are the exclusive, monopoly service providers by

¹³ See <http://www.universalservice.org/overview/filings/2004/Q3/>: Universal Service Administrative Company, Appendix HCO1 - 3Q 2004 and HC09 – 3Q 2004 (TDS total high cost support \$132,975 per month/14,085 working loops = \$9.40 per line).

¹⁴ *Virginia Cellular*, ¶ 31 n. 96.

default, dramatically dwarves the support available to competitive ETCs. Indeed, the amount of universal service support flowing to the Verizon affiliated companies alone will equal over \$78 million in the 3rd Quarter of 2004, or 8.3% of the total high-cost universal service support available to all carriers. (See **Exhibit 1** attached).¹⁵ Accordingly, the Commission should reject TDS' and Verizon's self-serving claims and follow its well-reasoned earlier decision to comprehensively address the funding questions in the separate *Portability* proceeding.

III. AWS' DESIGNATION AS A COMPETITIVE ETC IN VERIZON'S NON-RURAL SERVICE AREAS IS CONSISTENT WITH THE PUBLIC INTEREST, CONVENIENCE AND NECESSITY

The Commission should also reject Verizon's transparent attempt to impose the same public interest standard in its non-rural Florida service areas that Congress separately required to be applied in rural telephone company service areas. (See Verizon Comments, pp. 11-16). To do so would impermissibly render the plain language of 47 U.S.C. § 214(e)(6) meaningless. Rather, the Commission should find (as it has in every prior designation proceeding under section 214(e)(6)) that an applicant who demonstrates its satisfaction of the statutory prerequisites set forth in section 214(e)(1), and who can provide a valuable competitive alternative to the incumbent LEC, must be granted ETC designation consistent with the public interest, convenience and necessity.

As set forth in its Petition, and as both TDS and Verizon concede by their silence, AWS fully satisfies each of the requirements of section 214(e)(1). In addition, AWS will provide Florida consumers with a genuine competitive alternative to incumbent ETCs like TDS and

¹⁵ In fact, Verizon Florida, Inc., will receive over \$7 million in 3Q 2004 for serving only a portion of the State. In contrast, AWS will only receive an estimated \$3.3 million for serving substantially all of Florida. And although it is not currently possible to identify how much universal service support will be provided to the 111 ILEC companies operated by TDS, AWS believes that it will be substantial given that its Quincy Telephone Company operations in Florida alone will receive \$398,926 in the 3rd Quarter of 2004. See <http://www.universalservice.org/overview/filings/2004/Q3/>: Universal Service Administrative Company, Appendix HCO1 - 3Q 2004.

Verizon by increasing customer choice and providing access to larger local calling areas, innovative services, new technologies and mobility of service. Accordingly, AWS' Petition is entirely consistent with the public interest, convenience and necessity and should be granted.

IV. AWS' PETITION FULLY ADDRESSES THE COMMISSION'S *VIRGINIA CELLULAR* CONSIDERATIONS

AWS' Petition sets forth in detail how it satisfies the standards adopted in the Commission's *Virginia Cellular* decision. Nonetheless, TDS erroneously claims that AWS (1) failed to commit expanding its network to consumers not served by a wireline incumbent, and (2) failed to provide construction plans or otherwise commit to use universal service funds to improve service in rural areas. (TDS Comments, p. 8). TDS is absolutely wrong on both counts.

AWS has already developed a state-of-the-art network in Florida and can, today, provide nearly ubiquitous coverage throughout its requested ETC service areas. Moreover, AWS is entirely committed to offering the supported services throughout the rural study areas of not only TDS, but each of the rural telephone companies identified on Exhibit C to its Petition. AWS further anticipates that its coverage will be enhanced and expanded over time, which will benefit consumers throughout these rural and high-cost areas.

Unlike Virginia Cellular, which was required to build facilities to serve 157,000 people within its service area,¹⁶ AWS has limited its Petition to areas where it has substantially complete coverage and can timely meet requests for service today. (See Petition, p. 14) Thus, AWS' current coverage, its commitment to offer services throughout its requested service area, its commitment to address service extension consistent with the *Virginia Cellular* decision, and its strength as a national carrier clearly demonstrate that it will provide service to consumers who may not otherwise receive service from a wireline carrier and that the Company is fully

¹⁶ *Virginia Cellular*, ¶ 16.

committed to use universal service support to expand and improve service in rural and high-cost areas in Florida.

V. VERIZON'S CREAMSKIMMING ARGUMENTS ARE NOT RELEVANT TO CONSIDERATION OF AWS' PETITION BECAUSE IT DOES NOT SEEK REDEFINITION OF ANY RURAL SERVICE AREA

Finally, the Commission should reject Verizon's misplaced creamskimming arguments. Verizon wrongly contends that the Commission must address rural creamskimming concerns in connection with AWS' Petition. (Verizon Comments, pp. 17-18 & n. 29). As the Commission is well aware, the potential for creamskimming only arises in those situations where a competitive carrier seeks to serve only a portion of a rural telephone company's study area.¹⁷ Indeed, the Joint-Board originally recommended retention of the study area as a rural telephone company's ETC service area to minimize the risk that a competitor would seek to serve only the lowest-cost portions of a rural telephone company's study area.¹⁸ The Commission agreed.¹⁹

Since that time, the Commission has acted to minimize the opportunity for such creamskimming by offering rural telephone companies the option to "disaggregate" (or target) the federal universal service support amounts they receive to the higher-cost portions of their study areas. Thus, the risk of creamskimming by an applicant seeking ETC designation for less than the entire study area has been eliminated because the incumbent ETC can utilize the

¹⁷ TDS similarly misapplies the Commission's creamskimming analysis by complaining that AWS failed to provide sufficient detail regarding its intended use of universal service support. (TDS Comments, pp. 9-10). In so arguing, TDS ignores AWS' corporate certification filed as Exhibit D to the Petition. TDS also ignores the Commission's prior decisions finding that it is unrealistic to expect a new entrant to have finalized its business plans without first having some assurance that it will become eligible to receive universal service support. *In the Matter of Federal-State Joint Board on Universal Service Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket 96-45, *Declaratory Ruling*, FCC 00-248, ¶ 13 (rel. Aug. 10, 2000).

¹⁸ See *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket 96-45, FCC 96J-3, ¶ 172 (rel. Nov. 8, 1996).

¹⁹ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Report and Order*, FCC 97-157, ¶ 189 (rel. May 8, 1997).

disaggregation process to target its federal universal service support to better reflect the actual costs of serving different areas throughout its entire study area.²⁰

In any event, the Commission need not address creamskimming in this proceeding, because AWS has committed to serving throughout the entire study area of each rural telephone company identified on Exhibit C to its Petition. Accordingly, the Company has not sought to redefine the service area of any of these rural telephone companies, and the issue of creamskimming is irrelevant.

CONCLUSION

For the reasons set forth in its Petition, and as discussed above, AWS respectfully requests that the Commission act to benefit of Florida consumers and designate the Company as a competitive ETC throughout its requested service areas without delay.


²⁰ See *In the Matter of Federal-State Joint Board on Universal Service Petitions for Reconsideration of Western Wireless Corporation's Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, *Order on Reconsideration*, FCC 01-311 ¶ 12 (rel. October 19, 2001) ("Rural telephone companies, however, now have the option of disaggregating and targeting high-cost support below the study area level so that support will be distributed in a manner that ensures that the per-line level of support is more closely associated with the cost of providing service. Therefore, any concern regarding "cream-skimming" of customers that may arise in designating a service area that does not encompass the entire study area of the rural telephone company has been substantially eliminated.") (emphasis added).

Respectfully submitted,

Dated: July 6, 2004

AT&T WIRELESS SERVICES, INC.

Douglas I. Brandon
Vice President, Federal Affairs
1150 Connecticut Avenue, N.W., Fourth Floor
Washington, D.C. 20036
Telephone: (202) 223-9222
Facsimile: (202) 223-9095
doug.brandon@attws.com



BRIGGS AND MORGAN, P.A.

Mark J. Ayotte
Philip R. Schenkenberg
Matthew A. Slaven
2200 First National Bank Building
332 Minnesota Street
Saint Paul, Minnesota 55101
Telephone: (651) 808-6600
Facsimile: (651) 808-6450
mayotte@briggs.com

*ATTORNEYS FOR AT&T WIRELESS
SERVICES, INC.*

CERTIFICATE OF SERVICE

I, Matthew A. Slaven, do hereby certify that I have on this 6th day of July, 2004 served a true and correct copy of the foregoing REPLY COMMENTS OF AT&T WIRELESS SERVICES, INC. IN SUPPORT OF ITS PETITION FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER IN THE STATE OF FLORIDA on the following:

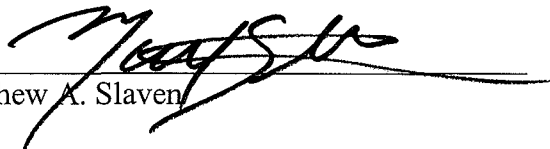
Richard Smith
Accounting Policy Division
Federal Communications Commission
445 12th Street SW
Room 5-A660
Washington, D.C. 20554

Sheryl Todd (3 copies)
Wireline Competition Bureau
Telecommunications Access Policy Division
445 12th Street SW
Room 5-B-540
Washington, D.C. 20554

Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Gerald J. Waldron
Mary Newcomer Williams
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2401
Counsel for TDS Telecom

Ann H. Rakestraw
Verizon
1515 North Court House Road
Suite 500
Arlington, Virginia 22201
Counsel for Verizon Communications, Inc.


Matthew A. Slaven

1663276v2